IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Deva Ram Vs. State of Rajasthan

S.B.CR. IInd MISC. BAIL APPLICATION NO.5212/2007

DATE OF ORDER :: October 29, 2007

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr.G.R.Punia, for the petitioner.

Mr.Ashok Upadhyaya, P.P. for the State.

BY THE COURT:

This is second bail application filed by petitioner Deva Ram, who is facing trial for the offences under sections 147, 148, 302/149 and 307/149 I.P.C. The first bail application came to be dismissed by a Co-ordinate Bench of this Court on 29.3.2007.

Heard learned counsel for the petitioner and the Public Prosecutor for the State. Carefully gone through the challan papers and the statements of the prosecution witnesses so far recorded.

PW.3 Shrawan Ram, PW.4 Teeja and PW.5 Dungar Ram are eye-witnesses and their statements have already been recorded by the trial court. PW.7 Dr.P.K.Saini, the Medical Jurist, who conducted the autopsy of deceased Ram Karan as also the statement of PW.6 Dr. G.L.Meena, the Radiologist.

It is contended by learned counsel for the petitioner that the injury on the skull of Ram Karan has been assigned to co-accused Ghasi Ram and the petitioner was alleged to have been armed with lathi. The injury by lathi has not been proved fatal but the cause of death is head injury.

Learned Public Prosecutor opposes the bail application and contends that the petitioner and the other co-accused have specifically been named in the FIR. The petitioner participated in the occurrence. The petitioner and the other co-accused formed the unlawful assembly and while the complainant party was in "Dhani" (house) in midnight at about 12.30-1.00, the petitioner along with other persons, co-accused in the case, armed with Lathis, Barchhies, Axe, Jai in order to kill them, entered into their house in "Dhani" and started causing injuries to PW.4 Smt. Teeja, PW.5 Dungar Ram, PW.3 Shrawan Ram and deceased Ram Karan and as many as 14 injuries have been caused to deceased Ram Karan and PW.5 Dungar Ram, PW.3 Shrawan

Ram and PW.4 Teeja have also suffered number of injuries in the hands of the other co-accused.

It is contended by learned counsel for the petitioner that the land is jointly owned by the petitioner having one half share and remaining ½ share of Asu Ram through whom, the complainant party claims on his death to be legal heirs of Asu Ram and, therefore, it cannot be said that the complainant party was exclusively in possession of the land.

Learned Public Prosecutor has invited my attention to the statement of PW.4 Teeja, who has clearly stated that one half share is belonging to the complainant party and the land, which was jointly owned has long been partitioned and the complainant party is in exclusive possession of the land and `Dhani`, it was the complainant party, who having their "Dhani" (houses) and living therein for last many years. On the statement of the witnesses, according to the learned Public Prosecutor, the land was not jointly owned but it has already been partitioned long back and, therefore, the petitioner cannot claim the land being jointly owned.

On perusal of the statement of PW.7 Dr. P.K.Saini, it is more than clear that the deceased suffered as many as 14

injuries on various parts of his body and some of the injuries resulted in fractures. The witness has stated that the deceased and the injured were surrounded by the accused-persons including the petitioner while they were sleeping between 12.30 – 1.00 in the night and they were given mercilessly beatings. From the statements of the eye-witnesses and the medical evidence, at this stage, it cannot be said that the petitioner has not inflicted any injury to the deceased or to the injured persons, on the contrary, there is a strong evidence showing implication of the petitioner having caused injuries to the deceased and other eye-witnesses having formed unlawful assembly in prosecution of common object, committed the criminal trespass in night and caused injuries to the deceased and the injured persons. In my view, it is not a fit case warranting release of the petitioner on bail. In this view of the matter, I do not find any good ground to release the petitioner on bail.

The bail application filed by the petitioner under section 439 Cr.P.C. is, therefore, dismissed. However, the trial court is directed to expedite the trial of the case.

[H.R.PANWAR],J.

m.asif/-